

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 26849 of 2013

(Arising out of **Order-in-Appeal** No.12/2013 (H-II) S.Tax dated 24.01.2013 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

R & A Associates

101, Saptagiri Residency,
1-10-98/a, Ghikoti Gardens,
Begumpet, Hyderabad,
Telangana – 500 016.

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APPELLANT

VERSUS

**Commissioner of Central Tax
Secunderabad - GST**

Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

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RESPONDENT

APPEARANCE:

Shri Venkat Prasad, CA for the Appellant.

Shri Wagh Chittanranjan Prakash, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30409/2023

Date of Hearing:09.08.2023

Date of Decision:01.12.2023

[ORDER PER: A.K. JYOTISHI]

M/s R & A Associates (herein after referred to as Appellant) are providing services of Company Secretary in terms of Section 65(85) of Finance Act, 1994.

2. Based on the scrutiny of the records by the Audit, it was observed by the Department that they have been collecting amount towards expenses like conveyance, courier charges, miscellaneous expenses, stationery charges and travelling expenses etc., which they have not shown in their ST-3 returns. Thereafter, invoking the provisions of the Rule 5 of the Service Tax (Determination of Value) Rules, 2006 read with Section 67 of Chapter 5 of Finance Act 1994, as also the Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 stating that such expenses were not deductible from the gross receipt for arriving at the assessable value, a Show Cause Notice

demanding service tax of Rs. 2,69,613/- along with interest as also for imposition of penalty under Section 78, was issued to the Appellant.

3. The Adjudicating Authority, after going through the Rule position came to the conclusion that the costs incurred should form part of the taxable value/income, as such expenses do not become reimbursable merely because they are indicated separately in the invoice issued by the service provider and confirmed the demand and imposed penalty.

4. On appeal, Commissioner (Appeals) after going through the nature of expenses as also the Rule position under Rule 5(1) and Rule 5(2), came to the conclusion that the Appellant has to procure such things like stationary, courier services, undertaking travels etc., for providing his services and since the Appellant has incurred expenses for providing the services hence the concept of Pure Agent is not applicable in the instant case. Therefore, the Appellant is liable to pay Service Tax on the expenses claimed as reimbursable expenditure. Accordingly, the Order of the Original Adjudicating Authority was upheld. Being aggrieved, Appellants are before the Tribunal against the said Order of Commissioner (Appeals).

5. Learned Counsel for the Appellant mainly relies on limited defence that the issue of charging Service Tax under the provisions of Rule 5 is no longer valid after the pronouncement of judgment in the case of UOI Vs Inter continental Consultants and Technocrats Pvt Ltd., [2018 (10) GST 401 (SC)]. He has also submitted that it is not disputed that said amount were getting reimbursed on the actual basis by the clients and that they were separately charging service tax on the value of the services provided to their clients. Learned CA has relied on many case laws wherein the levy of service tax on the reimbursed amount has not been held correct. He has also relied on the following case laws:

- i) VITP Private Limited (Formerly known as Vanenburg IT Park Pvt Ltd.,) Vs Commissioner of Central Tax, Hyderabad-IV [2022 (7) TMI 1030 – CESTAT Hyderabad]
- ii) Kfin Technologies Pvt Ltd., Vs Commissioner of Central Tax, Hyderabad [2021 (10) TMI 588 – CESTAT, Hyderabad]
- iii) Karvy Consultants Ltd., Vs CCE, Hyderabad-II [2019 (24) GSTL 240 (Tri-Hyd)]

They have also relied on following case laws in support of that "reimbursement" has been specifically included in the definition of consideration with effect from 14.05.2015 and not before that and the same is outside the purview of "gross amount charged" during the relevant period of Show Cause Notice.

- i) Coromandel Shipping Agencies Pvt Ltd., Vs CCCE & ST, Hyderabad [2018-TIOL-365-CESTAT-HYD]
- ii) CCE Vs Karam Freight Movers [2017 (4) GSTL 215 (Tri-Del)]
- iii) International Shippers & Traders P Ltd., Vs CCE [2016 (45) STR 460 (Tri-Bang)]

6. The Learned CA also points out that in terms of agreement with their clients, they had clearly mentioned that Appellant would act as a Pure Agent and the amount will be reimbursed by the client. And that, while the invoices were raised for the services rendered by the Appellant, debit notes were raised for the reimbursement of expenses incurred on behalf of client. He has also challenged the invocation of extended period in the facts of the case, as they had specifically mentioned in their ST-3 returns the amount under the Column "amount received as Pure Agent". In addition to the fact that the taxability of re-imbursements was a debatable issue since long and the provision was itself amended to cure the defects prospectively, thereby invocation of extended period of limitation is not sustainable in the present case. He has relied on the following judgments:

- i) Pushpam Pharmaceuticals Company Vs Collector of C. Ex, Bombay [1995 (78) ELT 401 (SC)]
- ii) Jaiprakash Industries Ltd., CCE [2002 (146) ELT 481 (SC)]
- iii) Continental Foundation Jt Venture Cs CCE, Chandigarh - I [2007 (216) ELT 177 (SC)]

7. Heard both the parties.

8. On going through the rival contentions, the core issue for determination is whether the amount received by the Appellants from their clients in respect of certain expenses on actual basis, would be a reimbursable amount or otherwise and if it is a reimbursable, whether the same needs to be included in the gross value charged for the purpose of levy of service tax or otherwise.

9. Since the Show Cause Notice has relied on Rule 5, it is important to peruse the Rule 5 of Service Tax (Determination of Value) Rules, 2006. Rule 5 provides for inclusion in or exclusion from the value of certain expenditure or costs' and the provision is reproduced below for better understanding;

"5. Inclusion in or exclusion from value of certain expenditure or costs-

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:"

In the instant case, the Revenue is of the view that certain expenditures in respect of which the Appellants have not paid Service Tax, are otherwise necessarily required to perform by the Company Secretary, for providing the taxable service to the clients and therefore should be included in the gross amount charged, and tenable to service tax and no exclusion unless the said expenses were provided by Appellant as "Pure Agent" can be allowed. Further, the Commissioner (Appeals) has held that in the given facts, Appellants cannot be treated as Pure Agent since these expenses are essential to provide their services.

10. The issue regarding leviability of service tax on the reimbursed amount came up before Delhi High Court in the Writ Petition filed by Intercontinental Consultants and Technocrats Pvt Ltd., where after going through the Statutory Provisions under the Finance Act 1994 and Rules made there under, the Hon'ble Court declared Rule 5 to be ultra vires of the provision of Section 66 & 67 of Finance Act 1994. The Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt Ltd., [2018 (10) GSTL 401 (SC)] examined the correctness of the judgment of the Delhi High Court upheld the decision of Hon'ble Delhi High Court. The Hon'ble Supreme Court also took note in para 29, that Legislature amended Finance Act in 2015, with effect from 14.05.2015, amending the definition of "consideration" to include reimbursable expenditure / cost incurred by the service provider and therefore observed that with effect from 14.05.2015, by virtue of provisions of Section 67 itself, such reimbursable cost or

expenditure would also form part of the valuation of taxable service for charging service tax and also held this amendment has to be prospective in nature. Hon'ble Supreme Court finally dismissed the appeal filed by the Union of India, thereby upholding the decision of the Delhi High Court which had struck Rule 5 as unconstitutional as well as ultra vires.

11. There is nothing on record in the Show Cause Notice to the effect that the expenses incurred by the Appellants were not being reimbursed on the actual basis by the client. On the contrary, the Appellants have submitted that these were being reimbursed by the clients on the actual basis for which they were issuing debit notes, and not invoice. Therefore, the nature of the expenses / cost is nothing but reimbursable expense / cost. The provision under which such expense / costs were proposed to be included i.e. Rule 5 has been held to be ultra virus, and as such no longer applicable and therefore such reimbursable expenses cannot be included in the gross value charged even by invoking Section 67, keeping in view of the judgment cited supra. It is only after the amendment in the definition of consideration in 2015, such reimbursement can be included in the gross value charged. The other relied upon case laws cited have followed the judgment of the Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt Ltd., for not including reimbursable expenses in the gross amount charged for the purpose of levying Service Tax.

12. Therefore, having regard to the factual matrix and the case laws cited by the Learned CA for the Appellant, the demand cannot be sustained and therefore the Order of the Commissioner (Appeals) is liable to be set aside and accordingly we set aside the Order of the Commissioner (Appeals).

13. Appeal is allowed with consequential benefits, if any, in accordance with the law.

(Order Pronounced in open court on 01.12.2023)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)